

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

RECEIVED

MAY 17 2006

PRO SE OFFICE

----- x  
Carrie L. Chandler Pena,

Plaintiff,

-against-

United States Bureau of Prisons  
320 First Street  
Washington, D.C. 20534

Defendant.  
----- x

CV

06  
Complaint

2480

06 Civ. \_\_\_\_\_ (\_\_\_\_)

GERSHON, J.

BLOOM, M.J.

NATURE OF ACTION

1. This is an action brought pursuant to 5 U.S.C. 552(a)(4)(B). The action seeks disclosure of documents sought by Plaintiff under the Freedom of Information Act ("FOIA"), to which Plaintiff is rightfully entitled.

VENUE

2. Venue lies within the Eastern District of New York under 5 U.S.C. 552(a)(4)(B), on the ground that it is the judicial district within which Plaintiff resides.

PARTIES

3. Plaintiff is a private citizen of the United States and the Requestor of the documents which are the subject of this litigation.

4. Upon information and belief, Defendant, United States Bureau of Prisons has superintendence, management, and control of the documents sought by Plaintiff.

## FACTS

5. On June 4, 1992, Plaintiff was taken into custody by the United States Secret Service under the name of Carrie L. Chandler, and, after arraignment, remanded to custody under Identification Number 39749-053.

6. On various dates between June 1992 and September 1994, Plaintiff was housed at the Metropolitan Correctional Center, New York City, and Metropolitan Detention Center, Brooklyn, New York.

7. By letter dated July 2, 2004, Plaintiff requested that she be furnished a copy of her complete record with the Bureau of Prisons, and provided information sufficient for the Bureau of Prisons to locate such record (the "Request"). (See Exhibit 1.)

8. By letter dated July 27, 2004, Defendant acknowledged receipt of the Request, and instructed that Plaintiff was to furnish a Certificate of Identity in order for the Request to be processed. (See Exhibit 2.)

9. By letter dated August 3, 2004, Plaintiff submitted a completed Certificate of Identity to Defendant. (See Exhibit 3.)

10. On March 25, 2005, Plaintiff spoke with Aisha Ogburn of the United States Bureau of Prisons. Ms. Ogburn informed Plaintiff that the Certificate of Identity had not been received by Defendant. Plaintiff was instructed to submit a duplicate Certificate of Identity.

11. By letter dated April 1, 2005, Plaintiff submitted a copy of the original Certificate of Identity. (See Exhibit 4.)

12. As of September 2, 2005, Plaintiff had not received any response to her Request. On said September 2, 2005, Plaintiff submitted an administrative appeal to Defendant. (See Exhibit 5.)

13. As of the date set forth below, Plaintiff has not received a response to her September 2, 2005 administrative appeal to Defendant.

The Law

14. Title 5 U.S.C. §552(6)(A)(ii), states:

Each agency, upon any request for records made under paragraph (1), (2), or (3) of this subsection, shall – make a determination with respect to any appeal within twenty days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of such appeal. If on appeal the denial of the request for records is in whole or in part upheld, the agency shall notify the person making such request of the provisions for judicial review of that determination under paragraph (4) of this subsection.

15. Pursuant to the provisions of 5 U.S.C. §552(6)(a)(ii), the administrative appeal described above was to be responded to within twenty (20) days, exclusive of Saturdays, Sundays and legal public holidays.

16. As of the date set forth below, Plaintiff has not received any response to her May 5, 2005 administrative appeal.

17. The date set forth below is substantially beyond the twenty (20) days, exclusive of Saturdays, Sundays, and legal public holidays permitted by 5 U.S.C. §552(6)(A)(ii).

18. Petitioner did not receive any notice of extension of time to respond to her May 5, 2005 administrative appeal as permitted under 5 U.S.C. §552(6)(B)(i).

19. 5 U.S.C. §552(a)(6)(C)(i) provides:

Any person making a request to any agency for records under paragraph (1), (2), or (3) of this subsection shall be deemed to have exhausted his administrative remedies with respect to such request if the agency fails to comply with the applicable time limit provisions of this paragraph. If the Government can show exceptional circumstances exist and that the agency is exercising due diligence in responding to the request, the court may retain jurisdiction and allow the agency additional time to complete its review of the records. Upon any determination by an agency to comply with a request for records, the records shall be made

promptly available to such person making such request. Any notification of denial of any request for records under this subsection shall set forth the names and titles or positions of each person responsible for the denial of such request.

20. Because Defendant failed and refused to respond to Plaintiff's May 5, 2005 appeal within the twenty (20) days, exclusive of Saturdays, Sundays and legal public holidays permitted thereunder Plaintiff is now entitled to seek judicial relief under 552(a)(4)(B), which states:

On complaint, the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated, or in the District of Columbia, has jurisdiction to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant. In such a case the court shall determine the matter de novo, and may examine the contents of such agency records in camera to determine whether such records or any part thereof shall be withheld under any of the exemptions set forth in subsection (b) of this section, and the burden is on the agency to sustain its action. In addition to any other matters to which a court accords substantial weight, a court shall accord substantial weight to an affidavit of an agency concerning the agency's determination as to technical feasibility under paragraph (2)(C) and subsection (b) and reproducibility under paragraph (3)(B).

21. Plaintiff has exhausted her administrative remedies and this case is now ripe for review.

#### Argument

22. Pursuant to 5 U.S.C. 552(b), documents sought must be disclosed unless they fall squarely within nine specific categories of exemptions:

(1)(A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified pursuant to such Executive order;

(2) related solely to the internal personnel rules and practices of an agency;

(3) specifically exempted from disclosure by statute (other than section 552b of this title), provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;

(6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (F) could reasonably be expected to endanger the life or physical safety of any individual;

(8) contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

(9) geological and geophysical information and data, including maps, concerning wells.

23. It is respectfully submitted that disclosure of Plaintiff's Bureau of Prisons record to Plaintiff will not disclose documents required to be kept secret in the interest of national defense or foreign policy and will not disclose documents classified pursuant as such by Executive order.

24. It is respectfully submitted that disclosure of Plaintiff's Bureau of Prisons record to Plaintiff will not disclose documents related solely to the internal personnel rules and practices of the United States Customs and Border Patrol or any other agency of the United States.

25. It is respectfully submitted that disclosure of Plaintiff's Bureau of Prisons record to Plaintiff will not disclose documents specifically exempted from disclosure by statute.

26. It is respectfully submitted that disclosure of Plaintiff's Bureau of Prisons record to Plaintiff will not disclose documents containing trade secrets or commercial or financial information obtained from a person and which is privileged or confidential.

27. It is respectfully submitted that disclosure of Plaintiff's Bureau of Prison records to Plaintiff will not disclose inter- or intra-agency memoranda or letters which would not be available to a party other than an agency in litigation with the agency.

28. It is respectfully submitted that disclosure of Plaintiff's Bureau of Prison record to Plaintiff will not constitute disclosure of personnel or medical files or similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy of any other person.

29. It is respectfully submitted that disclosure of Plaintiff's Bureau of Prisons record to Plaintiff would not disclose records or information compiled for law enforcement purposes.

30. It is respectfully submitted that disclosure of Plaintiff's Bureau of Prisons record to Plaintiff will not disclose information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions.

31. It is respectfully submitted that disclosure of Plaintiff's Bureau of Prisons record to Plaintiff will not disclose geological and geophysical information and data, including maps, concerning wells.

32. Plaintiff respectfully submits that there is no justifiable reason to not disclose Plaintiff's Bureau of Prison record to Plaintiff.

33. This application is made in good faith.

34. No previous application has been made for the relief sought herein.

WHEREFORE, Plaintiff prays that the order of the Court will issue directing Defendant to disclose Plaintiff's Bureau of Prisons record to Plaintiff, awarding Plaintiff the costs and disbursements of this action, including postage fees, photocopy costs, transportation expenses, and reasonable attorney fees, if any, and granting to Plaintiff such other and further relief as to the Court seems just and proper.

Dated: Brooklyn, New York  
May 6, 2006

Yours, etc.,



Carrie L. Chandler Pena  
P.O. Box 4422  
New York, NY 10163

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X

Carrie L. Chandler Pena,

Plaintiff,

Affirmation

-against-

06 Civ. \_\_\_\_\_ ( )

United States Bureau of Prisons  
320 First Street  
Washington, D.C. 20534

Defendant.

-----X

I, Carrie L. Pena, declare, under penalty of perjury, that the within statements are true and correct to the best of my knowledge.

Dated: Brooklyn, New York  
May 6, 2006



Carrie L. Chandler Pena



# Exhibit 1

## Carrie Chandler Pena

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P.O. Box 4422  
New York, NY 10163-4422  
Telephone and Fax: (646) 607-1610  
E-Mail: [carrielpena@justice.com](mailto:carrielpena@justice.com)

July 2, 2004

Via Certified Mail  
Article No. 7003-2260-0002-7877-4634

United States Bureau of Prisons  
FOIA/PPA Officer  
320 First Street  
Washington, D.C. 20534

Re: Freedom of Information Request

Dear FOIA/PPA Officer:

This is a request for information made pursuant to 5 U.S.C. §552. I seek to obtain a *complete* copy of my records while a pretrial detainee, including all transportation records. The relevant information is as follows:

Name:	Carrie L. Chandler
Date of Birth:	7/27/50 (might be listed as 12/27/47)
Register No.:	39749-053
Social Security No.	098-48-6987

I will pay the necessary fees.

It is anticipated that I will receive a response to this request within the twenty (20) business days permitted by 5 U.S.C. 552(6)(a)(i).

By my signature below, I affirm under penalty of perjury that the above is true and correct.

Very truly yours



# Exhibit 2



U.S. Department of Justice  
Federal Bureau of Prisons  
ATTN: FOIA/PA  
320 First Street, N.W.  
Washington, D.C. 20534

July 27, 2004

Carrie Pena  
P.O. Box 4422  
New York, NY 10163-4422

Dear Requester:

This is in response to your request for information under provisions of the Freedom of Information/Privacy Acts. We have determined that your request is missing required information. In order to process your request you will need to provide the information identified below. Only marked paragraphs are relevant to your request.

☒ **You have not provided proper authorization.** We have attached a form DOJ-361 , Certification of Identity. Completing this form should provide the information we need to proceed. We cannot accept a copy of this form. You must submit your original request when returning the Certification of Identity as we do not keep copies. A current or former inmate should include on the form his/her Federal Bureau of Prisons register number. Your authorization was incomplete because:

You did not provide the original authorization, OR witness signature has been omitted.

The authorization was not signed and dated by the person to whom the records pertain, OR

The date on the authorization was more than two months old.

You have not provided enough information for us to identify the individual whose records you seek. Please provide:

Federal Bureau of Prisons Register Number  
Approximate date of commitment to a Federal institution  
Approximate date of release/name of releasing institution  
The name (s) committed under as a Federal inmate

You can find additional information on the Federal Bureau of Prisons FOIA/PA process at [www.bop.gov](http://www.bop.gov).

# Exhibit 3

# Carrie L. Pena

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P.O. Box 4422  
New York, NY 10163-4422  
Telephone and Fax: (646) 607-1610  
E-Mail: [carrielpena@justice.com](mailto:carrielpena@justice.com)

August 3, 2004

Certified Mail  
Article No. 7003-2260-0002-7877-4788

Records Access Officer  
United States Department of Justice  
Bureau of Prisons  
Attn: FOIA/PA  
320 First Street, N.W.  
Washington, D.,C. 20534

Re: Carrie L. Chandler  
Register No. 39749-053  
Freedom of Information Act  
Request No. 2004-08284

Dear Records Access Officer:

Enclosed please find the original of my Certification of Authenticity Form in furtherance of my request for release to me of my Bureau of Prison files.

It is anticipated that I will receive the documents sought in an expeditious manner.

Very truly yours



U.S. Department of Justice

## Certification of Identity



Privacy Act Statement. In accordance with 28 CFR Section 16.41(d) personal data sufficient to identify the individuals submitting requests by mail under the Privacy Act of 1974, 5 U.S.C. Section 552a, is required. The purpose of this solicitation is to ensure that the records of individuals who are the subject of U.S. Department of Justice systems of records are not wrongfully disclosed by the Department. Failure to furnish this information will result in no action being taken on the request. False information on this form may subject the requester to criminal penalties under 18 U.S.C. Section 1001 and/or 5 U.S.C. Section 552a(i)(3).

Public reporting burden for this collection of information is estimated to average 0.50 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Suggestions for reducing this burden may be submitted to Director, Facilities and Administrative Services Staff, Justice Management Division, U.S. Department of Justice, Washington, DC 20530 and the Office of Information and Regulatory Affairs, Office of Management and Budget, Public Use Reports Project (1103-0016), Washington, DC 20503.

Full Name of Requester <sup>1</sup>

CARRIE Chandler

# 39749-053

Citizenship Status <sup>2</sup>

American

Social Security Number <sup>3</sup>

098-48-6987

Current Address

P.O. Box 4432, N.Y., N.Y. 10163

Date of Birth

7/21/50

Place of Birth

12/27/47 on Record of D.O.B.  
New York

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and that I am the person named above, and I understand that any falsification of this statement is punishable under the provisions of 18 U.S.C. Section 1001 by a fine of not more than \$10,000 or by imprisonment of not more than five years or both, and that requesting or obtaining any record(s) under false pretenses is punishable under the provisions of 5 U.S.C. 552a(i)(3) by a fine of not more than \$5,000.

Signature <sup>4</sup>

Carrie Penn

Date

08/03/04

## OPTIONAL: Authorization to Release Information to Another Person

This form is also to be completed by a requester who is authorizing information relating to himself or herself to be released to another person.

Further, pursuant to 5 U.S.C. Section 552a(b), I authorize the U.S. Department of Justice to release any and all information relating to me to:

Print or Type Name

<sup>1</sup> Name of individual who is the subject of the record sought.

<sup>2</sup> Individual submitting a request under the Privacy Act of 1974 must be either "a citizen of the United States or an Alien lawfully admitted for permanent residence," pursuant to 5 U.S.C. Section 552a(a)(2). Requests will be processed as Freedom of Information Act requests pursuant to 5 U.S.C. Section 552, rather than Privacy Act requests, for individuals who are not United States citizens or aliens lawfully admitted for permanent residence.

<sup>3</sup> Providing your social security number is voluntary. You are asked to provide your social security number only to facilitate the identification of records relating to you. Without your social security number, the Department may be unable to locate any or all records pertaining to you.

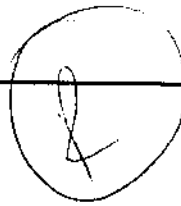
<sup>4</sup> Signature of individual who is the subject of the record sought.

# Exhibit 4



Carrie Chandler Pena

P.O. Box 4422  
New York, NY 10163-4422



2005-06/24

April 1, 2005

Certified Mail : Return Receipt  
Article No. 7004-1160-0002-3335-2535

Ms. Aisha Ogburn  
United States Bureau of Prisons  
FOIA/PPA Office  
320 First Street  
Washington, D.C. 20534

Re: Freedom of Information Request  
Request No. 2004-08284  
Carrie L. Chandler  
U.S. Marshal No. 39749-053

Dear Ms. Ogburn:

In furtherance of my conversation with you of March 15, 2005, regarding the fact that the Bureau of Prisons did not receive the Certification of Identity I mailed to it in August of last year, I enclose a duplicate of such Certification.

Please expedite this matter.

Very truly yours

*Carrie Pena*

Enclosure



# Exhibit 5

## Carrie L. Pena

---

P.O. Box 4422  
New York, NY 10163-4422

September 2, 2005

Certified Mail  
Article No. 7004-1160-0002-3335-3778

Records Access Appeals Officer  
United States Department of Justice  
Bureau of Prisons  
Attn: FOIA/PA  
320 First Street, N.W.  
Washington, D.,C. 20534

Re: Carrie L. Chandler  
Register No. 39749-053  
Freedom of Information Act  
Request No. 2004-08284

Dear Records Access Appeals Officer:

This letter is to appeal the unreasonable and ongoing delay, tantamount to totally ignoring my Request, for my records while confined as a pre-trial detainee in Federal custody.

By letter dated July 7, 2004, I requested a copy of all records of my confinement at the Metropolitan Correctional Center in New York City and the Metropolitan Detention Center in Brooklyn, New York as follows:

Name:	Carrie L. Chandler
Date of Birth:	7/27/50 (might be listed as 12/27/47)
Register No.:	39749-053
Social Security No.	098-48-6987

By letter dated, July 27, 2004, I was notified that I had not provided proper authorization for the release of the information sought and an Identification Form was enclosed for me to complete and return. By letter dated August 3, 2004, I returned the completed Certification of Identity.

On March 15, 2005, I spoke with Aisha Ogborn of the Bureau of Prisons. She informed me that my Request had not been processed because the Bureau had not received the Certificate of Identification. On April 1, 2005, I forwarded a copy of the Certification of Identification to Ms. Ogborn.

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As of this date, I have not received a copy of my BOP records. It has been over one full year. I respectfully submit that your failure and refusal to disclose the documents sought is unreasonable and thus, a constructive denial of said Request.

I respectfully request that I receive an answer to this Appeal within the time permitted by law. Upon your failure to respond to this appeal, judicial intervention is permitted to be sought and will be sought without any delay.

Very truly yours

A handwritten signature in black ink, appearing to read "Cami Rene". The signature is written in a cursive, flowing style.